

1 A What relevant time period?

2 JUDGE SIPPEL: In what context?

3 MR. HOLT: Well, I'm trying to get a sense for
4 when this conversation with Mr. Constantine occurred.

5 JUDGE SIPPEL: Well, you have got it established
6 now that it was late January of '95 that he first had
7 contact with Mr. Constantine. Ask him when he had the next
8 contact.

9 BY MR. HOLT:

10 Q And when was the next time that you met Mr.
11 Constantine face-to-face?

12 A It would have been the April 27th meeting.

13 Q Okay. So, the conversation that you had with Mr.
14 Constantine regarding service to various buildings occurred
15 between those two dates; is that right?

16 A I'm not going to agree with that.

17 Q After you first met Mr. Constantine face-to-face
18 in January of '95, when was the next time that you spoke to
19 him regarding -- when was the next time that you spoke to
20 him about any matter relating to Liberty?

21 A Sitting here now, I couldn't tell you.

22 Q Approximately how many conversations do you recall
23 having with Mr. Constantine between late January of '95 and
24 April 27th of '95?

25 A I really don't recall.

1 Q Can you give me an estimate?

2 A It would merely be speculation.

3 JUDGE SIPPEL: Does that log describe how lengthy
4 those notes are?

5 MR. HOLT: It does not, Your Honor.

6 THE WITNESS: This would not have been before
7 April 27th, I'll tell you that, because that was the first
8 date that I ever heard of or knew, or suspected, that
9 Liberty was operating microwave paths without authorization.
10 So, if anything, these are notes from that 27th or sometime
11 thereafter, but not prior to.

12 BY MR. HOLT:

13 Q Well, after the April 27th meeting do you recall
14 having a conversation with Mr. Constantine regarding service
15 to various buildings?

16 A Yes.

17 Q Approximately how many conversations did you have
18 with him on that subject?

19 A I can't say; three or four, five. I'm really not
20 sure.

21 MR. HOLT: Well, Your Honor, I would like to make
22 a request that you conduct an In Camera inspection of this
23 document and to determine whether or not it appears to be
24 the notes of the conversation, or the notes of the meeting
25 that he attended on the 27th.

1 We have had substantial amounts of testimony about
2 that meeting, and I believe that any privilege that may have
3 been attached to the notes would be waived as a result of
4 the disclosure of the substance of the meeting, and it may
5 shed some relevant light on the subject.

6 MR. SPITZER: The only problem, Your Honor, is
7 that the document itself apparently is undated, or else the
8 privilege log would have indicated the date. Now, maybe the
9 nature of the notes would permit one to discern what the
10 date of the conversation was. We have no objection to an In
11 Camera review of that document.

12 JUDGE SIPPEL: Well, how about -- let's do it this
13 way then. Retrieve the document, and review it with Mr.
14 Barr, and maybe he can shed some light as to what his best
15 estimate would be of the date or the circumstances. And you
16 can send that to me with a cover letter, and I'll take a
17 look at it.

18 MR. SPITZER: Very well, Your Honor.

19 JUDGE SIPPEL: And also a verification. I won't
20 work with a copy. Just have somebody verify that it is a
21 true copy.

22 MR. SPITZER: Absolutely, Your Honor.

23 JUDGE SIPPEL: All right. Anything more, Mr.
24 Holt?

25 //

1 BY MR. HOLT:

2 Q Just a few, Your Honor. Mr. Barr, I'm curious to
3 know why if you were receiving assistance from the
4 Constantine firm in preparation of pleadings why attorneys
5 from the Constantine firm were not listed as co-authors on
6 the pleadings?

7 MR. SPITZER: Objection, Your Honor.

8 JUDGE SIPPEL: I am going to sustain it. First of
9 all, that is an awfully broad statement. There is no
10 question that in June of 1995, based on representations that
11 have been made from the beginning of this proceeding, the
12 Constantine law firm was actively involved in doing an
13 internal audit of the situation.

14 Now, I would certainly expect that that
15 information as it was developed would be shared with Mr.
16 Barr and his efforts to make disclosure to the Commission.
17 So, I don't -- you know, pride of authorship. I didn't mean
18 it to sound that way, Mr. Barr.

19 THE WITNESS: No, that's fine.

20 BY MR. HOLT:

21 Q Mr. Barr, if I could direct your attention,
22 please, to Time Warner Cable Exhibit 18. Do you have that
23 document before you?

24 A Yes.

25 Q If you could turn to page two of the actual

1 pleading.

2 A I'm there.

3 Q Focusing on the first full paragraph. We see a
4 number of path sites listed, and there are numbers that
5 follow the addresses there, correct?

6 A Correct.

7 Q And what do those numbers signify?

8 A Commission assigned file numbers.

9 Q And why were those numbers included in this
10 document?

11 A For Commission reference to an application.

12 Q And do you recall how those numbers were obtained?

13 A Well, I either obtained them directly from
14 Michael, or from an inventory; Michael Lehmkuhl, or from an
15 inventory.

16 Q Do you recall which inventory, if any, you used to
17 refer to? If you had used an inventory do you think it is
18 likely that you would have used the April 28th inventory
19 that was produced?

20 A I would have used the most recent.

21 Q Okay. I'm curious, but if you focus on the
22 address of 2727 Palisades Avenue, why there is no file
23 number provided for that location.

24 A I'm not really sure. Perhaps one had not been
25 assigned to it.

1 Q Let's take a look back at the April 28th
2 inventory, and that is Time Warner Cablevision Exhibit --

3 JUDGE SIPPEL: I'm sorry, but what number is that?

4 MR. SPITZER: 34, Your Honor.

5 MR. HOLT: 34, Your Honor.

6 BY MR. HOLT:

7 Q And if you would turn to the last page, or I'm
8 sorry, the second to last page of that exhibit, do you see
9 2727 Palisades listed there? If you look to the far left
10 there --

11 A Right. Right. I see it. I see it.

12 MR. HOLT: Your Honor, the copy that I have
13 appears to have certain numbers cut off. Is your copy also
14 cut off? It looks like it is a photocopy here.

15 JUDGE SIPPEL: Where are you, on page 004?

16 MR. HOLT: Well, it has a date -- yeah, I guess it
17 would be 004, and where it lists the 2727 Palisades
18 location.

19 JUDGE SIPPEL: Well, mine seems to have everything
20 on that line. Are you talking about that one particular
21 line?

22 MR. HOLT: If you will look over to the left, mine
23 just has the numbers 295. It should have additional
24 numbers, 713295.

25 JUDGE SIPPEL: Well, that's all I have, is the

1 295.

2 MR. HOLT: Okay. I think the copies that were
3 made for the purpose of this exhibit cut that number off.
4 Should we reform the exhibit to contain the full numbers, or
5 can counsel stipulate to that?

6 JUDGE SIPPEL: Well, is that -- yeah. Is that
7 critical? Can't we just stipulate?

8 MR. SPITZER: We will accept whoever
9 representation that it is 713. Is that accurate, 713?
10 There is no question, Your Honor.

11 MR. HOLT: And it's also listed in the HDO, and I
12 just wanted to make sure that it was agreed that the
13 inventory that was prepared had the same number that was in
14 the HDO.

15 JUDGE SIPPEL: All right.

16 BY MR. HOLT:

17 Q Now, this inventory was prepared on or about April
18 28th, 1995, correct, Mr. Barr?

19 A Yes, that's dated April 28th, and so I assume that
20 it was prepared on or about that date.

21 Q Okay. So you had the file number available to you
22 at the time that you prepared the May 17th surrepley; is that
23 correct?

24 A That would appear to be true, yes.

25 Q I'm curious to know why the file number was

1 omitted from this document?

2 A Inadvertence. Too many cooks stirring the broth.
3 I really don't have a specific recollection.

4 Q Well, at the time that the surreply was filed, no
5 petition to deny had been filed against 2727 Palisades
6 Avenue by Cablevision had it?

7 A By when?

8 Q By the time -- well, you are aware of the fact are
9 you not that 2727 Palisades Avenue is a site located within
10 Cablevision's service territory?

11 A I will accept your representation.

12 Q At the time that you prepared the surreply were
13 you aware of that fact?

14 A I don't think so, no.

15 Q Did you discuss that fact with anyone?

16 A I don't recall that, no.

17 Q Did the subject of Cablevision come up with
18 respect to any of the paths listed in the surreply?

19 A No, not to my recollection.

20 MR. HOLT: Your Honor, I don't have any further
21 questions of this witness.

22 JUDGE SIPPEL: All right. Thank you, Mr. Holt.
23 Mr. Weber.

24 MR. WEBER: Thank you, Your Honor.

25 //

1 CROSS EXAMINATION

2 BY MR. WEBER:

3 Q Mr. Barr, I'm Joseph Weber, and I represent the
4 Wireless Telecommunications Bureau. On April 27th, 1995,
5 can you recall if you had more than one telephone
6 conversation with Mr. Price?

7 A Yes, I think we had had an earlier conversation
8 that day, or -- well, we had another conversation that day.
9 I really can't recall if it was before or after.

10 Q If you could turn to Time Warner Cablevision
11 Exhibit Number 44, which is your billing records, and turn
12 to the page which has the April 27th hours reflected. You
13 will notice on your listing for April 27th, there first is
14 listed a telephone call with Peter Price, and then a
15 telephone call with Leslie Spasser, and then a listing of a
16 conference call.

17 Was the conference call referred to here the one
18 which included Mr. Rivera, Mr. Constantine, yourself, and
19 Mr. Price?

20 A Yes.

21 Q And then would this mean that maybe before that
22 there was just a call just between you and Mr. Price alone,
23 the first reference of the telephone call with Peter Price?

24 A Yes, it could.

25 Q But you don't have a recollection that it

1 definitely does?

2 A No, we might have spoken beforehand.

3 Q And so you don't remember what that call was
4 specifically about?

5 A Other than the status of the petitions, no.

6 Q Can you recall if there was anything raised in
7 that conversation with Mr. Price which led to the need to
8 have a conference call which included Mr. Rivera and Mr.
9 Constantine?

10 A That was already planned.

11 Q How long was the conference call which included
12 Mr. Rivera and Mr. Constantine?

13 A I really don't recall.

14 Q Do you have any -- I mean, was it maybe 15
15 minutes, or longer?

16 A It was probably at least 15 minutes, and possibly
17 longer, but I really couldn't give you an outside time
18 frame.

19 Q Was it at all common for there to be conference
20 calls which included the attorneys from three different
21 firms and Mr. Price?

22 A I think this was the first one. Again, I think
23 concern about the delays were sort of reaching ahead, which
24 is what coalesced into this meeting.

25 Q Now, you stated that Mr. Price gave a list of a

1 dozen or so buildings where services were already being
2 operated or commenced. Did you write down this list?

3 A No, because again I think there was that memo, and
4 there was no real need to write.

5 Q Now, you stated in your direct testimony that you
6 can't recall whether you went back to the office and told
7 Mr. Lehmkuhl; is that correct?

8 A Right.

9 Q Is there any particular reason you -- well, at
10 this time you knew Mr. Lehmkuhl was the primary person
11 preparing the applications, correct?

12 A Well, that's right, yes. That had been true since
13 he joined the firm.

14 Q Is there any reason why you would feel that it is
15 not necessary to tell the person preparing these
16 applications that service had commenced in some of these --
17 for some of these paths?

18 A I don't know how to respond to that question. I'm
19 not really sure that I thought about it.

20 Q If you didn't tell him, is there a reason why you
21 didn't tell him?

22 A No, I don't think there is.

23 Q Did there come a time -- maybe not on April 27th,
24 but after that time -- that you did tell him that you heard
25 that paths were operated prematurely?

1 A That's likely, yes.

2 Q Do you recall when that occurred?

3 A No, I don't.

4 Q Now, you knew that he -- do you recall Mr.

5 Lehmkuhl's reaction when you told him?

6 A Since I don't really recall telling him, no, I
7 can't really recall a reaction.

8 Q Now, you said that you were shocked when you heard
9 this from Mr. Price; is that correct?

10 A Yes.

11 Q Did there come a time where this feeling of being
12 shocked wore off, and you were no longer concerned about it?

13 A No.

14 Q On April 27th, you were aware that Mr. Lehmkuhl
15 was preparing SDA applications, correct?

16 A Yes, I think so.

17 Q Do you consider the information that certain of
18 these paths were already being operated relevant to Mr.
19 Lehmkuhl's work on the SDAs?

20 A In hindsight, probably yes. At the time though
21 the requests were in preparation on the one hand, and on the
22 other hand, this information had just come out. There was
23 an effort to try and discern the how's and the why's.
24 Again, certainly in my mind, and I believe in Liberty's
25 mind, that nobody intended to withhold or keep information

1 from the Commission.

2 Q Now, you also testified that you reported to Mr.
3 Price that they may have to discontinue service to these
4 paths. What was Mr. Price's reaction to that?

5 A Well, that was -- I think that sort of -- all of
6 that is kind of bundled into my initial reaction. I think
7 he listed this off, and I think I indicated that this was a
8 serious problem, and that it is a violation of the rules,
9 and that service ought to be discontinued.

10 So, it wasn't like I made one point, and he
11 responded, and then I said something else, and he responded.
12 This was all a bundled response to the information, and
13 again as I said before, I think he was taken aback by my
14 response.

15 Q And you by that mean taken aback by your response
16 as a whole?

17 A Yes, I think so.

18 Q Do you recall if he ever made any specific
19 comments relating to discontinuance of service?

20 A Well, he didn't want to, and I think Lloyd as
21 well, who was somewhat skeptical of the information, just
22 didn't want to react hastily, and run over to engineering
23 and flip a switch. I think there was a concern that --
24 again that they needed to verify the information that was
25 given to us on that day, and found out what, and why, and to

1 proceed from there.

2 Q And when the SDAs were filed -- you are aware that
3 the SDAs were filed one week later on May 4th, correct?

4 A Right.

5 Q Now, a question was asked of you on direct about
6 why hadn't the SDAs disclosed this premature service, and
7 your answer was -- to paraphrase -- not all the information
8 had been flushed out yet. Is it your testimony then that
9 the information that hadn't been flushed out yet is kind of
10 the why this occurred?

11 A Yes, I think so.

12 Q So is it then your testimony that because Liberty
13 was not certain why premature service had occurred, it was
14 not relevant to tell the Commission in an application that
15 service had already commenced?

16 A No, I think Liberty's intent at the time was to
17 not divulge the information on a piecemeal basis. It wanted
18 to try and find out what happened, and then go forward with
19 the information.

20 Q I'd like you to turn to Liberty -- or, I'm sorry,
21 TWCV Bureau -- TWCV Exhibit Number 17, and if you see this,
22 it says on one of the SDA requests was filed on May 4th,
23 correct?

24 A Yes, that is what it appears to be.

25 Q And it is for the application with file number

1 708778, correct?

2 A Correct.

3 Q Now, if you just keep your finger on that, and
4 turn to Exhibit Number 30, which is Appendix A of the HDO,
5 and if you notice there the first application listed is the
6 708778, which is for receiver locations at 35 West End Ave.,
7 and 639 West End Ave., correct?

8 A Un-huh (nodding head). Yes.

9 Q And if you will notice, service at 35 West End
10 commenced on January 3rd, and at 639 West End, it commenced
11 on February 14th, both in 1995, correct?

12 A Right. That's what it says.

13 Q Right. And Liberty has conceded that Appendix A
14 is substantially correct, and I will just go ahead and
15 inform you, and so it is apparent that the service hadn't
16 (sic) commenced on these two buildings at least by the May
17 4th date this was filed; is that correct?

18 A I'm sorry?

19 Q That when the May -- that when this particular SDA
20 was filed, the one at Exhibit 17.

21 A Right.

22 Q This service had commenced for those two paths?

23 A Yes. Yes. Taking that as true, yes.

24 Q And also I would like you to turn to Exhibit 35,
25 which is the memo that I think you stated that this might

1 have been the list of buildings you had when you spoke to
2 Mr. Price, correct?

3 A Right.

4 Q And if you will notice, both 639 West End Ave.,
5 and 35 West End Ave., are also both listed on this list?

6 A They are, yes.

7 Q And so to your recollection then these paths would
8 have been paths that would have been discussed in that
9 conference call on April 27th when Mr. Price was going down
10 a list where he told you that service had already commenced?

11 A I believe so, yes.

12 Q Okay. Now, go back to Exhibit 17 again, please.
13 And I would like you to turn to page -- first turn to page
14 005, and if you will look under the heading number four,
15 Purpose of Operation.

16 A Right.

17 Q You will notice that the first sentence says the
18 equipment will be used to distribute?

19 A Right.

20 Q Do you agree that that is a sentence stating
21 that -- making it appear as though service will be in the
22 future, and it is more of a future looking statement, as
23 opposed to stating that it is already being incurred?

24 A I think that is really more of a sort of template
25 kind of a statement.

1 Q You did state that you did review these particular
2 SDAs, correct?

3 A Right.

4 Q And Mr. Price did as well, correct?

5 A To my recollection, yes. They were sent to him
6 for his review.

7 Q And also on the next page, page 006, again like
8 under the heading 6-12, Technical Information, it states
9 that Liberty will operate the station; and again that does
10 not state that Liberty is operating the station, correct?

11 A No, it does not, but again I think it is sort of a
12 template.

13 Q Were there discussions with anybody about whether
14 or not in all of the SDAs filed on May 4th whether the
15 Commission should go ahead and -- or whether Liberty should
16 go ahead and disclose that these particular paths are in
17 operation, even though Liberty had not discovered why these
18 problems occurred?

19 A I think so, because I -- again, I had a great deal
20 of concern about the fact that Liberty was operating
21 unauthorized, and so I think that such a conversation might
22 have taken place.

23 Q Do you recall --

24 A But --

25 Q I'm sorry.

1 A But, you know, at that point, I wasn't really --
2 there were several other attorneys involved, and I really
3 wasn't running the show at that time, and while people
4 listened to what I had to say, it was a collective effort,
5 and --

6 Q Are you finished?

7 A Yes.

8 Q Do you recall who ultimately made the decision to
9 go ahead and file the SDAs and not disclose it at that
10 point?

11 A No, I can't say that I do.

12 Q Was there some pressure from Liberty to get the
13 SDAs on file?

14 A Yes, I believe there was interest in getting them
15 on file.

16 Q That may be a little bit different than what I did
17 ask. Was there actually pressure from Liberty to get them
18 on file?

19 A I'm not sure that pressure is the right word, no.

20 Q What was the interest then on getting them on
21 file?

22 A Well, they wanted to get them on file so as to
23 potentially obtain authority to operate, these and other
24 paths. Again, it was the -- the SDA concept was -- it
25 encompassed more than these 15 paths.

1 (Brief Pause.)

2 BY MR. WEBER:

3 Q Also on Exhibit Number 17, if you will turn to
4 page 003, and the -- and I want you to look at the last
5 sentence on the first paragraph on that page. And I would
6 just ask you is that also just boiler plate?

7 A Is that when the 18 gigahertz order was granted?

8 Q No, I'm sorry, the paragraph at the top, which
9 starts with Liberty Cable Company, Inc., and so --

10 A Respectfully request special temporary authority?
11 I'm not sure where you are.

12 Q On Exhibit 17, page 003, the sentence which starts
13 off with Liberty Cable Company, Inc., respectfully requests,
14 yes.

15 A Oh.

16 Q And then the sentence that ends, "any delay in the
17 institution of temporary operation would seriously prejudice
18 the public interest."

19 A I think that is a template or form as well.

20 Q Okay. Now, on the April 27th call, you stated
21 that there was a need to do some further checking, and I
22 believe one of the things that wanted to be checked was to
23 see if actually service was being provided to these
24 particular buildings on that list; is that correct?

25 A That and I think to verify whether in fact -- if

1 so, that it was unlicensed, and to verify whether or not a
2 license existed.

3 Q You know when that -- just that particular
4 verification, and not the how it occurred, but just that
5 verification of checking to see if there was unlicensed
6 operation occurred?

7 A No, I don't really know when that took place.
8 Again, I was relying on the people in New York to make these
9 investigations.

10 Q Well, when did they get back to you, or did they
11 get back to you to let you know their conclusions?

12 A I believe it was in connection with the
13 preparation of the surreply. It might have been sooner, but
14 I sort of place it all in one bundle.

15 Q And by all in one bundle you are including the
16 checking to see if there is in fact unauthorized operations,
17 and with how it actually occurred?

18 A No, I was talking really about the billing records
19 reflect my first entry for the surreply was the 15th of May.
20 But regardless of whether my first entry was on the 15th or
21 before then, I think it is all interrelated.

22 JUDGE SIPPEL: Wasn't the surreply on the 17th of
23 May?

24 MR. SPITZER: May 17th, Your Honor, yes.

25 //

1 BY MR. WEBER:

2 Q I'd like you to turn now to the Liberty Bureau
3 Exhibit Number 17.

4 A I believe that I am already there. Oh, Liberty.
5 Excuse me.

6 Q Right. And this is an affidavit you prepared and
7 signed on January 13th, 1997?

8 A I don't have that exhibit here. The last exhibit
9 I have is 15.

10 Q I will ask you again. Is this a declaration that
11 you prepared and signed on January 13th, 1997?

12 A Yes, it bears my signature, and it is dated the
13 13th of January. This is my declaration.

14 Q Right, and you recall preparing this?

15 A Oh, yes.

16 Q Can you recall to what extent there was double
17 checking on the review of the files, meaning if either Mr.
18 Lehmkuhl, or the paralegal, looked through some files, did
19 another person such as yourself look through the same files?

20 A I think Mike might have looked through some of the
21 files that Mr. Jekabowski had gone through, and I had
22 reviewed some, but I don't believe that it was all of the
23 files that they had reviewed.

24 Q And during the discovery period of this proceeding
25 did any of the attorneys from the Constantine firm ever

1 inquire of what personal knowledge you may hold to determine
2 whether or not you may be a relevant witness to this
3 proceeding?

4 A Probably, yes. I think I was in touch with them,
5 you know, about the proceeding.

6 Q In these discussions with the Constantine firm did
7 you ever discuss the April 27th telephone call, or
8 conference call, that you had with Mr. Barr --

9 A I'm Mr. Barr.

10 Q I'm sorry. With Mr. Constantine, Mr. Rivera, and
11 Mr. Price?

12 A I believe so.

13 Q And in that discussion did the fact that Mr. Price
14 had a list of buildings that were being operated prematurely
15 come up? Well, let me re-ask this. When you were relating
16 the April 27th phone call to the Constantine firm, did you
17 also relate the fact that Mr. Price had a list of buildings
18 that he believed there was premature service?

19 A I related that I recalled that there was some type
20 of a list that had building locations on it.

21 JUDGE SIPPEL: Was that list waiting for you when
22 you showed up at the Rivera firm?

23 THE WITNESS: I really don't recall. Lloyd might
24 have -- Lloyd Constantine might have brought it with him,
25 because Mr. Henry Rivera isn't identified, I think, as a

1 recipient either.

2 JUDGE SIPPEL: Well, was it faxed to the meeting
3 by Mr. Price, do you recall?

4 THE WITNESS: I really don't recall.

5 BY MR. WEBER:

6 Q Do you know if anybody else was in the room with
7 Mr. Price at the time that he was speaking with you and the
8 group?

9 A Nobody else spoke from New York.

10 Q Is Liberty paying you your hourly salary, or are
11 you billing Liberty rather for your hourly rate in order to
12 appear here today?

13 A Yes. I'm likely to bill for this.

14 Q And do you know if Mr. Gutmann will likewise bill
15 for his time?

16 A I assume.

17 MR. WEBER: Thank you, Mr. Barr, that's all the
18 questions that I have.

19 JUDGE SIPPEL: I just want to ask you a few
20 questions on this Exhibit 35, which is the April 26th
21 memorandum. How -- and that is -- and I want to also ask
22 you to make reference to the April 27th to your billing
23 logs, and it has been established that you did have an
24 earlier phone call with Mr. Price.

25 How sure can you be that you didn't discuss this

1 path licensing subject with him in the first phone call?

2 THE WITNESS: I'm positive that it wasn't during
3 that phone call.

4 JUDGE SIPPEL: How can you be sure of that?

5 THE WITNESS: I'm just positive that it happened
6 over at Henry Rivera's firm.

7 JUDGE SIPPEL: Well, before you left your office
8 for Henry Rivera's law firm did you know that you were going
9 to be discussing the subject matter that is reflected in the
10 April 26th memo?

11 THE WITNESS: No.

12 JUDGE SIPPEL: There was no phone call -- well,
13 all right. You have said that you had two phone calls with
14 Mr. Price that day. One of them was at four o'clock at the
15 conference, and the other one was sometime earlier in the
16 day. Do you remember if it was morning or afternoon?

17 THE WITNESS: I really don't recall.

18 JUDGE SIPPEL: You don't recall that, but you
19 definitely recall that you were not discussing the subject
20 matter which is reflected in Exhibit 35? That you are sure
21 about?

22 THE WITNESS: I'm absolutely sure that I
23 discovered about the service of these locations at Mr.
24 Rivera's office.

25 JUDGE SIPPEL: Well, how can you be so sure of

1 that?

2 THE WITNESS: I just specifically recall it.

3 JUDGE SIPPEL: Well, when do you specifically
4 recall --

5 THE WITNESS: It was --

6 JUDGE SIPPEL: Go ahead.

7 THE WITNESS: I'm sorry, but it was just that it
8 came as a shock to me, and that's why I remember it.

9 JUDGE SIPPEL: Well, when do you specifically --
10 when do you recall at the conference receiving a copy of
11 Exhibit 35?

12 THE WITNESS: Well, that I really can't say.

13 JUDGE SIPPEL: Well, if it was available at the
14 conference at four o'clock in the afternoon, if it was made
15 available to you, why wouldn't it be made available to you
16 as soon as you walked into the conference?

17 THE WITNESS: Well, it might have been. I'm not
18 saying that it wasn't. I'm just saying that I don't recall
19 at what point this was given to me. I just recall that
20 there was an item such as this at that conference.

21 JUDGE SIPPEL: And somebody handed it to you, I
22 assume, or was it laying on the table when you walked in?
23 Can you reconstruct this a little bit?

24 THE WITNESS: I honestly don't recall.

25 JUDGE SIPPEL: Well, because what I am trying to